

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
METROCALL, INC.,	)	
	)	File Nos. E-98-16, E-98-17
Complainant,	)	
	)	
v.	)	
	)	
SOUTHWESTERN BELL TELEPHONE	)	
COMPANY and PACIFIC BELL	)	
TELEPHONE COMPANY,	)	
	)	
Defendants.	)	

**Order On Reconsideration**

**Adopted: March 12, 2002**

**Released: March 15, 2002**

By the Commission:

1. In this Order on Reconsideration, we deny the petition filed by Metrocall, Inc. ("Metrocall") seeking reconsideration of our Memorandum Opinion and Order on Supplemental Complaint for Damages.<sup>1</sup> Metrocall seeks reconsideration of our finding that it is subject to charges for transiting traffic<sup>2</sup> as well as our decision to consider such charges in determining whether Metrocall was entitled to any refund of its payments to defendants Pacific Bell Telephone Company and Southwestern Bell Telephone Company (collectively, "the SBC defendants").<sup>3</sup> Metrocall also demands that the Commission impose forfeitures on the SBC defendants and award Metrocall half of any resulting payments. Alternatively, Metrocall seeks reconsideration of our rejection of its demand for punitive damages against the SBC defendants.

2. Transiting traffic is "traffic that originates from a carrier other than the interconnecting LEC [Local Exchange Carrier] but nonetheless is carried over the LEC network

<sup>1</sup> *Metrocall, Inc. v. Southwestern Bell Tel. Co.*, Memorandum Opinion and Order on Supplemental Complaint for Damages, 16 FCC Rcd 18123 (2001) ("Damages Order").

<sup>2</sup> See Petition for Reconsideration, File Nos. E-98-16 *et al.* (Nov. 1, 2001) at 8. We made this finding in our order determining liability in this proceeding. See *TSR Wireless, LLC v. U S West Communications, Inc.*, 15 FCC Rcd 11166, 11177, para. 19 n.70 (2000) ("Liability Order"), *petition for recon. dismissed*, 16 FCC Rcd 11462, *petition for review denied sub nom. Qwest Corporation v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). We subsequently rejected Metrocall's demand that we use the *Damages Order* to reconsider our finding. *Damages Order*, 16 FCC Rcd at 18130, para. 21.

<sup>3</sup> Petition for Reconsideration at 8.

to the paging carrier's network."<sup>4</sup> In the *Liability Order* in this proceeding, we held that LECs had the right to charge paging carriers for such traffic.<sup>5</sup> In the *Damages Order*, we held that, although the SBC defendants had improperly imposed certain charges on Metrocall, Metrocall was not entitled to a refund of its payments to the SBC defendants because, even under Metrocall's billing figures, it still had underpaid for lawful charges, including transiting charges, on its interconnection-related accounts with the SBC defendants.<sup>6</sup> In its Petition for Reconsideration, Metrocall claims that we should not have considered the transiting traffic charges in the *Damages Order* because we allegedly erred in our decision regarding the lawfulness of those charges in the *Liability Order*.

3. The parties focus on whether Metrocall properly disputed the lawfulness of transiting traffic charges in this proceeding, such that it might question the legality of those charges in its supplemental complaint for damages.<sup>7</sup> We need not reach this question, however, because we have affirmed the lawfulness of transiting traffic charges since the close of briefing in this case.<sup>8</sup> In a recent decision, we stated unequivocally that "our rules ... allow a LEC to charge a paging carrier for traffic that transits the LEC's network and terminates on the paging carrier's network as long as the traffic does not originate on the LEC's network."<sup>9</sup> Metrocall's petition for reconsideration on this point is therefore denied.

4. Metrocall also asks that the Commission impose forfeitures against the SBC defendants and award it half of any such payments, in light of its efforts "to force the LECs to comply with the Act and the Commission's rules and orders."<sup>10</sup> Alternatively, Metrocall seeks reconsideration of our decision in the *Damages Order* to deny it punitive damages against the SBC defendants.<sup>11</sup>

5. We deny both of Metrocall's demands. As an initial matter, we note that "[f]orfeitures are not available as a remedy to a complainant in a section 208 complaint

---

<sup>4</sup> *Liability Order*, at 11177, para. 19 n.70.

<sup>5</sup> *Id.*

<sup>6</sup> *Damages Order*, 16 FCC Rcd at 18123, para. 1.

<sup>7</sup> In its Supplemental Complaint for Damages, Metrocall sought review of our earlier determination in the *Liability Order* regarding the lawfulness of charges for transiting traffic. We denied Metrocall's request because it was "procedurally improper." *Id.*, 16 FCC Rcd at 18130, para. 21. Metrocall could not seek such review of the *Liability Order* at the damages stage of the proceeding. *Id.* Instead, Metrocall "should have filed a petition for reconsideration with the Commission or a petition for review with the federal appellate courts." *Id.* Metrocall challenges this finding, while the SBC defendants support it. See Petition for Reconsideration at 6-10; Opposition to Petition for Reconsideration, File Nos. E-98-16 *et al.* (filed Nov. 13, 2001) at 2-7.

<sup>8</sup> See *Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Commun.*, Memorandum Opinion and Order, FCC 01-347 (rel. Nov. 28, 2001) ("*Texcom*"), petition for reconsideration pending. See also *Mountain Commun., Inc. v. Qwest Commun. Int'l, Inc.*, Memorandum Opinion and Order, DA 02-250, para. 10 (Enf. Bur. rel. Feb. 4, 2002) (citing *Texcom* in rejecting paging carrier's challenge to transiting traffic charges); *Metrocall, Inc. v. Concord Tel. Co.*, Memorandum Opinion and Order, DA 02-301, paras. 11-12 (Enf. Bur. rel. Feb. 8, 2002).

<sup>9</sup> *Texcom*, FCC 01-347, para. 5.

<sup>10</sup> Petition for Reconsideration at 17.

<sup>11</sup> *Id.* at 18.

proceeding.”<sup>12</sup> Thus, Metrocall’s request for some sort of “bounty” against the SBC defendants need not be addressed here. Finally, Metrocall offers no new facts or arguments in support of its demand that we reconsider our denial of its claim for punitive damages. We therefore deny Metrocall’s petition for reconsideration on this point for the reasons stated in the *Damages Order*.<sup>13</sup>

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 405, that Metrocall’s Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

---

<sup>12</sup> *William G. Bowles, Jr. PE. d/b/a Mid Missouri Mobilfone v. United Tel. Co. of Missouri*, 12 FCC Rcd 9840, 9855, para. 28 (Com. Car. Bur. 1997); *see also Jeffrey Krauss v. MCI Telecom. Corp.*, 14 FCC Rcd 2770, 2776, para. 11 (Com. Car. Bur. 1999) (“The private remedies available through the section 208 complaint process are separate and distinct from the public remedies available through section 503 forfeiture proceedings. Section 208 provides for private remedies for individuals aggrieved by carriers, while section 503 gives the Commission discretion to assess forfeitures.”).

<sup>13</sup> *See Damages Order*, 16 FCC Rcd at 18129-30, para. 20.